IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.2041 of 2007

Date of decision 3.12.2007

Hans Raj Petitioner

Vs.

State of H.P. and others Respondents

Coram:

The Hon'ble Mr. Justice Dev Darshan Sud, Judge.

The Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1] Yes

For the Petitioner: Mr.Lalit K. Sharma, Advocate.

For the respondents: Mr.M.S.Chandel, Advocate General, with Mr.J.K.Verma, Dy. Advocate General and Mr.Rajan Diwan, Addl. Advocate General. for respondents No.1 to 2.

Per Rajiv Sharma, J.

The brief facts necessary for the adjudication of this petition are that the petitioner had passed his Matriculation Examination from the Himachal Pradesh Board of School Education in the year 2001. He had completed Three Years Degree Course of Shastri from Hemwati Nadan Bahuguna Garhwal University Srinagar (Garhwal) Uttraranchal in the year 2007.

He had submitted an application for being considered for the vacant post of Shastri in Government Middle School, Chhupari Tehsil Rohru District Shimla. Consequently, he was called for interview on 27.8.2007 by the President, P.T.A. Govt. Middle School, Chhupari, Tehsil Rohru District

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[1] Whether reporters of local papers are allowed to see the judgment? Yes

Shimla. He appeared before the interview Board comprising of President, P.T.A., Subject Specialist and PTA Secretary.

The petitioner was recommended for appointment by the Selection Committee after adjudging his suitability vide appointment letter dated 31.8.2007. He submitted his joining as Shastri on PTA basis in the Govt. Middle School, Chhupari, Tehsil Rohru District Shimla. He was served with a notice dated 22.11.2007, whereby he was called upon to establish the validity/recognition of his certificate within a period of seven days. He made a representation to the President, Parents Teachers Association, brining to his notice that he be provided with reasonable opportunity of being heard in case his Three Years Degree Course of Shastri from Hemwati Nadan Bahuguna Garhwal University Srinagar (Garhwal) Uttraranchal was under cloud.

Mr. Lalit K.Sharma, learned counsel appearing for the petitioner had strenuously argued that period of seven days provided for proving the validity/recognition of the certificate issued by Hemwati Nadan Bahuguna Garhwal University Srinagar (Garhwal) Uttranchal is inadequate. The learned Advocate General submitted that the period of seven days granted to the petitioner to prove the validity/recognition of the degree was sufficient and cannot be treated as inadequate taking into consideration the grounds mentioned in the notice dated 22.11.2007.

We have heard the learned counsel for the parties and have also perused the record carefully.

The petitioner has passed his three years Shastri Degree Course from Hemwati Nadan Bahuguna Garhwal University Srinagar (Garhwal) Uttraranchal as is evident from Annexure P-2 annexed with the petition. He had appeared before the interview board on 27.8.2007. He has been offered appointment on 31.8.2007 pursuant to which he submitted his joining on 1.9.2007. The testimonials/certificates tendered by the

petitioner along with the application were looked into by the Selection Committee. If the President of the P.T.A. was not satisfied with the validity/recognition of the certificate of Shastri Degree Course issued to the petitioner by Hemwati Nadan Bahuguna Garhwal University Srinagar (Garhwal) Uttraranchal the petitioner should have been granted adequate time to establish the validity of the course. The period of seven days granted to the petitioner to prove the validity/recognition of three years degree course in the facts and circumstances of the case is to be treated as inadequate. The authorities must always grant reasonable time to the person where serious allegations are leveled. The petitioner had to establish the validity/recognition of the course after getting into correspondence with the aforesaid University, the Himachal Pradesh University and the State of Himachal Pradesh to establish that the degree awarded to him was duly recognized. It is settled law by now that the hearing afforded must be adequate and sufficient.

In **Sudhir Ranjan Halder v. State of West Bengal and another**, AIR 1961 Calcutta 626, a Division Bench has held that giving of notice of show cause against a person on misconduct in disciplinary proceedings is not merely a matter of form, but of substance. Their Lordships have held as under:

> "We need not concern ourselves with propriety of the line of reasoning adopted by the Court below. Even assuming for the sake of argument that the registered notice was properly sent to the plaintiff's Barisal address and there refused by him or by somebody on his behalf, even then we have to hold that the notice gave too short a period to the plaintiff-appellant to show cause. The giving of notice to show cause against charges of misconduct in a disciplinary proceeding is not merely a matter of form, but a substance. The notice, that was given in the instant case, merely satisfied a formality, it did not give to the plaintiff appellant any opportunity to show cause because the notice did not even reach

him, if at all it did, before expiry of the time fixed for showing cause. We need only refer to the observation by the Supreme Court in Khem Chand v. Union of India, 1958 S.C.A.222 :AIR 1958 SC 300)_

> "He must not only be given an opportunity but such opportunity must be reasonable one"—
> In order to emphasize on the impropriety of giving an impossibly short date to a party to show cause, as in this case- one day's time to a person resident abroad."

In **G.Kamalakumari v. Municipal Corporation of Hyderabad,** AIR 1990 Andhra Pradesh 159, the learned Single Judge has held that 3 days' time to the owner to show cause was not sufficient.

The learned Single Judge in **K.Sathyashankara Shetty v. Mangalore University, Mangalore and another**, AIR 1992 Karnataka 79 has held that the notice must be of sufficient length to enable the defence or the case to be prepared. His Lordship has held as under:

> "Administrative justice contemplated certain requirements to be fulfilled if the hearing is to be regarded as fair. One of them is adequate notice of hearing. The notice must be of sufficient length to enable the defence or the case to be prepared. In R.V.Thames Magistrate's Court, ex parte Polemis, (1974)2 All E.R. 1219, a conviction was quashed for breach of natural justice since the defendant was not afforded sufficient time to prepare his defence. This was considered to be more important than the apprehension that the defendant might leave the jurisdiction of the Court.
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> In R.V.South West London Supplementary Benefit Appeal Tribunal, Ex P.Bullen, (1976) 120 Sol Jo 437 it was held that to fail to accede to a request for an adjournment may amount to a failure to give a hearing and thus to a failure of natural justice or fairness.
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> In Priddle v. Fisher & Sons, (1968) 3 All ER 506 the applicant was given forty-eight hours notice to attend a hearing. He immediately told the Tribunal that the time of hearing coincide with an interview for employment. This was confirmed by a third party. He asked for an adjournment. The Tribunal said the reason was insufficient to justify an adjournment or to explain the failure to attend and made a direction in the applicant's absence. The direction was quashed. The right to a hearing was restored.

In the instant case, after furnishing the charge-sheet, list of witnesses and documents on 9.8.1989, the petitioner was asked to appear for further trial on 11.8.1989 itself and the petitioner had hardly 48 hours to prepare his case. Moreover, on 9th itself the trial was launched and the deposition of a witness was recorded and the petitioner refused to cross examine him since he was unprepared. In these circumstances it has to be held that there was a gross violation of the rules of natural justice.

I am of the opinion that apart from the glaring discrepancies and inconsistencies which are material and relevant, between the contents of the complaint lodged with the Police Sub-Inspector of Moodbidri Police Station and the complaint lodged with the College by M.N.Badakillayya, the manner in which the inquiry has been conducted justifies an inference that the entire proceedings are revolting to human conscience. Even a criminal is given a fair trial and fair hearing and it is expected that in an academic body a greater sense of fairness, reasonableness and human treatment would be available to a student facing a trial and on fronted with the grave consequence of expulsion from the college. In these circumstances, I am compelled to opine that not only the proceeding is draconian but also the impugned order. Apart from that, the impugned order does not stand legal scrutiny by any means. Relevant in the context is the principle which is manifest in R.V.Agricultural Land Tribunal Ex.P.Bracey, (1960) 1 All ER 518.

> "It is also an error of law to give reasons which are inadequate, to act on no evidence, on evidence which ought to have been rejected or to fail to take into consideration evidence which ought to have been considered."

In case **Sona Builders v. Union of India and others,** (2001)10 SCC 280 their Lordships have held that granting three days time to respond is inadequate. Their Lordships have held as under:

> "We are quite unable to agree with the view taken by the High Court. The notice was addressed on 21.5.1993 from Delhi to the appellant in Jaipur fixing the hearing on 31.5.1993. It was patent that it would take two or three days for that notice to be received in Jaipur even though dispatched by speed post. In effect, therefore, the notice gave five days to the addresses to respond,

and we are told that two of those days were Saturday and Sunday. Under Section 269-UD the Appropriate Authority had two months to act commencing from the end of the month in which the 37(1) form was filed. The form was filed on 9th March so that the Appropriate Authority had about two months and twenty days to take action. He did not take action until only one week from the last available date, and then it gave the appellant, in reality, only three days to respond. This was, plainly, most inadequate."

It is thus evident that the period of seven days granted to the petitioner to prove the validity/recognition of degree course of Shastri obtained from Hemwati Nadan Bahuguna Garhwal University Srinagar (Garhwal) Uttraranchal was inadequate and we are of the firm view that at least six weeks time should have been granted to the petitioner to prove the validity/recognition of three years degree course of Shastri.

Consequently the writ petition is allowed. Annexure P-5 dated 22.11.2007 is quashed and set aside. The respondents are at liberty to issue a fresh show cause notice to the petitioner by providing him six weeks time to prove the validity/recognition of the three years Degree Course of Shastri.

No order as to costs.

(Dev Darshan Sud),J.

December 3, 2007 (g) **(Rajiv Sharma), J.**